

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, AUGUST 6, 2003**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of August 6, 2003, was called to order by Mayor Hitchcock at 6:35 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; *Quesada v. City of Lodi et al.*, Superior Court of California, County of San Joaquin, Stockton Branch; Case No. CV 016631
- b) "Conference with Labor Negotiator, Human Resources Director Joanne Narloch, regarding Lodi Professional Firefighters, Association of Lodi City Employees regarding General Services and Maintenance and Operators pursuant to Government Code §54957.6" was ***pulled from the agenda pursuant to staff's request.***

C-3 ADJOURN TO CLOSED SESSION

At 6:35 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matter.

The Closed Session adjourned at 6:45 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:00 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Hays disclosed the following action.

In regard to Item C-2 (a), no reportable action was taken by Council.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of August 6, 2003, was called to order by Mayor Hitchcock at 7:00 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Dennis Fakes, St. Paul Lutheran Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hitchcock presented a proclamation to Mary Woelfel, Nutrition Education Coordinator, and Jane Ogden, Nutrition Assistant III, with Delta Health Care WIC proclaiming the month of August 2003 as "Breastfeeding Awareness Month" in the City of Lodi.

- D-3 (a) Robert Bechill, President of the All Veterans Plaza Foundation, presented the City with a check in the amount of \$10,000, which represented the Lodi Area All Veterans Plaza quarterly payment.
- D-3 (b) Steve Dutra, Parks Superintendent, reported that on April 27, 2001, the Lodi Lake Nature Area Docent Council submitted a Calfed Watershed Program proposal to the California Department of Water Resources to seek funding to establish a Lower Mokelumne River Watershed Education Project. The Calfed grant received in June 2001 earmarked \$29,000 for the design and production of two watershed educational murals. Artist Suzanne Kennedy was commissioned to design and assist in the production of the two murals. All eight panels should be installed by this fall at the trailhead to the Lodi Lake Nature Area. Ms. Kennedy introduced Kathy Grant who is coordinating the project, as well as students that were present.
- Mayor Pro Tempore Howard noted that the murals depict various water levels, beginning with the origin of the water source, down to the elevation in Lodi. Individual windows on the murals give added detail about what would be found at various elevations.
- D-3 (c) Tea Silvestri, Arts Coordinator, updated the City Council on recent activities and accomplishments of the Lodi Arts Commission.
- D-3 (d) Robina Asghar, Site Coordinator for Community Partnership for Families, announced that the Pakistani Independence Day Celebration would be held at Lodi Lake on August 17 and Mexican Independence Day would be held on September 16 at a location to be announced at a future date.

NOTE: Mayor Hitchcock recognized newly elected Lodi Unified School District board member Richard Jones.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously approved the following items hereinafter set forth:

- E-1 Claims were approved in the amount of \$10,639,253.68.
- E-2 The minutes of July 2, 2003 (Regular Meeting), July 8, 2003 (Shirtsleeve Session), July 22, 2003 (Shirtsleeve Session), and July 22, 2003 (Special Meeting) were approved as written.
- E-3 Adopted Resolution No. 2003-138 rejecting bid from George Reed, Inc., and awarding contract for 2003 Handicap Ramp Retrofit Project to A.M. Stephens Construction Company, of Lodi, in the amount of \$279,919; and appropriated \$375,000 for the project in accordance with staff recommendation.
- E-4 Adopted Resolution No. 2003-139 authorizing the purchase of two 15 kV padmount liquid insulated vacuum switchgears, as a sole source purchase, from Trayer Engineering Corporation, of San Francisco, in the amount of \$46,171.85.
- E-5 Approved White Slough Water Pollution Control Facility Task Order to West Yost & Associates for engineering and environmental work to establish a sphere of influence surrounding the White Slough Facility in the amount of \$83,500; and appropriated funds in the amount of \$92,000 in accordance with staff recommendation.
- E-6 Accepted the improvements under the "Fire Station #3 Reroof, 2141 South Ham Lane" contract.

- E-7 Accepted the improvements under the "Fire Station #3 Air Conditioning Replacement, 2141 South Ham Lane" contract.
 - E-8 Accepted the improvements under the "Traffic Signal and Street Lighting for Harney Lane and Stockton Street" contract.
 - E-9 Adopted Resolution No. 2003-140 accepting the improvements under the "Streetlight Completion Project – Phase III" contract and appropriating \$24,944.60 additional funds for the project.
 - E-10 Adopted Resolution No. 2003-141 approving the final map and improvement agreement for Hutchins Place, Tract No. 3258, and directing the City Manager and City Clerk to execute the improvement agreement and map on behalf of the City.
 - E-11 Approved improvement deferral agreement for 2113 Cochran Road and authorized the City Manager and City Clerk to execute the agreement on behalf of the City.
 - E-12 Adopted Resolution No. 2003-142 authorizing the City Manager to execute a professional services agreement with Power Engineers, Inc., for engineering services for the Killelea Substation Reconstruction project and appropriated funds in the amount of \$295,000.
 - E-13 Adopted Resolution No. 2003-143 authorizing the Community Development Director to submit a grant application in the amount of \$20,000 to the State Integrated Waste Management Board for the Waste Tire Public Education and Amnesty Day Event Program.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider Reimbursement Agreement RA-03-01 establishing an area of benefit and reimbursable costs for developer-funded public improvements for 770 North Guild Avenue and a resolution establishing an area of benefit and reimbursable costs for City-funded improvements for the project at 770 North Guild Avenue.

Wally Sandelin, City Engineer, reported that several years ago the City initiated an annexation of some industrial land to the City. Staff recommends that Council approve a reimbursement agreement to the Mondavi Corporation for facilities it constructed that serve other properties in its area. He explained that they were improvements that had to be constructed to bring standard public services to its project. Staff also recommends that Council approve an area of benefit for City-funded facilities. The City partnered with the Mondavi project to add extensions of City services including water, sewer, storm drainage, and road connection closures.

Hearing Opened to the Public

- Ed Atwood stated that part of the property involved in the area of benefit belonged to his grandfather. It was his understanding that there would be no requirement by property owners to reimburse the City unless there was development on the property. He asked if a person had ten acres and developed five, whether they would then owe half of their total amount to the City.

Public Works Director Prima answered that it depends on the nature of the project, but in general, the amount would be prorated.

Mr. Atwood noted that an Engineering News Record (ENR) figure is used to determine the interest rate that would be charged for those property owners who are holding back their payments until development. He asked how the ENR compares with the Consumer Price Index and what its history has been over the past ten years.

Mr. Prima replied that the information would be obtained and provided to Mr. Atwood.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously took the following actions:

- Approved the Reimbursement Agreement #RA-03-01 for public improvements for 770 N. Guild Avenue establishing an area of benefit and reimbursable costs for developer-funded public improvements for 770 N. Guild Avenue; and
- Adopted Resolution No. 2003-144 establishing an area of benefit and reimbursable costs for public improvements for 770 N. Guild Avenue.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments

- a) The City Council, on motion of Council Member Beckman, Hansen second, unanimously made the following appointments/reappointments:

Greater Lodi Area Youth Commission (Student Appointees)

Brent Dutra	Term to expire August 30, 2005
Karlyn Nieland	Term to expire August 30, 2005
Elisa Villarreal	Term to expire August 30, 2005
Joey Nardinelli	Term to expire August 30, 2005
Gabi del Castillo	Term to expire August 30, 2004

Lodi Arts Commission

Donna Phillips	Term to expire July 1, 2006
Bill Crabtree	Term to expire July 1, 2006
Sherri Smith	Term to expire July 1, 2006
Patrick Stockar	Term to expire July 1, 2006

City Clerk Blackston noted that two vacancies remain on the Lodi Arts Commission and at the request of Mayor Hitchcock their appointment consideration will be made at the regularly scheduled City Council meeting of August 20, 2003.

H-4 Miscellaneous – None

I. REGULAR CALENDAR

I-1 "Discussion and possible action to censure Mayor Susan Hitchcock"

At the request of Council Member Land, City Attorney Hays read the following definition from Black's Law Dictionary: "Censure: A formal resolution of a legislative, administrative, professional, or other body reprimanding a person, normally one of its own members, for specific conduct; an official reprimand or condemnation."

City Manager Flynn noted that six blue sheet documents (filed) have been distributed to Council and each were communications in support of Mayor Hitchcock.

Council Member Land apologized to Council Members, staff, and citizens for having to bring this issue before Council. He reported that up until 5:00 p.m. today he was speaking on the phone with Mayor Hitchcock trying to come to an agreement regarding a compromise. He asked Mayor Hitchcock again if she would accept the following compromise: 1) make a public apology to Council, staff, citizens, and attorney Michael Donovan for her conduct and behavior at the May 19, 2003, mediation session; 2) agree that when any Council Member attends mediation meetings that they attend solely for the purpose of gathering information and receiving input; and 3) agree that if any Member of Council has concerns regarding the mediation or anything else dealing with the litigation that it be brought back to Council for discussion.

Mayor Hitchcock replied that she had not changed her mind, to which Mr. Land stated he assumed her answer was no.

Council Member Land clarified that the issue being considered was not whether the PCE/TCE litigation was right or wrong – it was whether the Mayor and Council Members have a sworn duty to abide by Council decision. With the aid of an overhead presentation (filed), Mr. Land reviewed the following reasons why he believed Mayor Hitchcock should be censured and asked Council to consider the totality of these facts when making its decision.

- Reason 1: *Mayor Hitchcock has taken sides with polluters, and now she is working against the City in its legal efforts.*

Council Member Land stated that he believed Mayor Hitchcock would do anything to discredit the City Manager and City Attorney. He reported that she has failed to act consistently with the directions of the Council and her actions have or could jeopardize the existing litigation against the City. Mr. Land reported that the following individuals believe the City is taking the proper course regarding the litigation: Judge Dave Warner, Assemblyman Alan Nakanishi, County Supervisor Jack Sieglock, former Mayor Phil Pennino, and former Mayor Steve Mann.

- Reason 2: *The issue is not whether the Mayor has a right to attend mediation sessions.*

Council Member Land stated that to date Mayor Hitchcock has taken the side of the insurance companies, while “thumbing her nose” at the City. He stated that the City has spent thousands of dollars responding to Ms. Hitchcock’s public statements in opposing counsel documents. To substantiate this, he read several quotes from 1999 to 2002 listed in *Exhibit 1 (of 5)*, which were in a packet of documents he distributed to Council (filed). He believed that Ms. Hitchcock’s statements were laying the groundwork for the opposing attorneys. Mr. Land recalled that he had nominated and voted for Ms. Hitchcock to be Mayor as he felt that she could bring consensus to the Council. He now believed that to be wrong.

- Reason 3: *Mayor Hitchcock announced in open session the vote of the Council.*

Council Member Land read a portion of the minutes from the City Council meeting of June 18, 2003 (*Exhibit 2*), in which Mayor Hitchcock announced the 3-2 vote taken in closed session and her statement that she would be attending the next mediation meeting regardless of the vote prohibiting it. Mr. Land reported that Ms. Hitchcock did in fact attend the next mediation meeting. He recalled that in closed session Council Members pleaded with the Mayor not to attend the mediation session of June 27, 2003; however, she informed them that she planned to be present. Mr. Land stated that matters discussed in closed session are recognized under the Brown Act as generally better serving the public interest if they remain confidential. He noted that the judge did not order Council to attend the mediation session. The judge had called Ms. Hitchcock and invited her to the meeting. He read the following quote from the Mayor, which was published in the Lodi News-Sentinel on July 27, 2003: *“I really never thought that I*

would be going up against the City Council on this. I've got to do this. I represent the 60,000 people of Lodi and it's a job I take very seriously." Mr. Land objected to this statement pointing out that Ms. Hitchcock alone does not represent the population of Lodi; it is the Council as a body who were elected to represent the people and empowered to make decisions. No single Member has the right to veto a Council decision.

- Reason 4: *Mayor Hitchcock is purposely trying to derail the City's legal efforts.*

Council Member Land stated that Mayor Hitchcock has misrepresented the City's position during mediations. He recalled reporting to Council in closed session the Mayor's conduct he witnessed at the May 19, 2003 mediation session at Hutchins Street Square. The meeting had been going well and the insurance companies had acknowledged that there was contamination.

Lori Gualco, attorney representing Guild Cleaners, interrupted Mr. Land and pointed out that mediation proceedings were confidential.

Mr. Land asked Council not to be swayed by the audience present at the meeting, but rather to base its decision on the facts presented. He stated that after the mediation session had been completed he was approached by City Attorney Hays who informed him that the Mayor was having a private discussion with the mediation judge. Mr. Land then returned to the mediation room and witnessed Mayor Hitchcock speaking to the judge and providing her opinion that Council had not given mediation settlement authority to the City's attorneys. When Ms. Hitchcock came outside the building, an opposing attorney informed her of a comment that she had overheard one of the City's attorneys make. Mr. Land then witnessed Ms. Hitchcock yell at attorney Michael Donovan, stating that if she had two more votes she would have him fired.

- Reason 5: *The Mayor has accepted political donations from at least one Potentially Responsible Party.*

Council Member Land questioned whether a grand jury investigation should be requested related to Ms. Hitchcock's campaign donations and potential conflicts of interest. He stated that a conflict exists whenever a public official cannot exercise his or her duties without disinterested diligence for the benefit of the public. An official with a conflict of interest is disqualified from participating in the matter whether the interest is financial or non-financial. He reviewed Ms. Hitchcock's campaign statements as listed in *Exhibit 3* noting that she received donations from Jack Alquist and Guild Cleaners. He stated that campaign donations are given for one of two reasons: 1) like-thinking, or 2) accessibility. He believed that in this case they were given for both reasons. He wondered how many donations just under the reporting amount of \$100 that Ms. Hitchcock may have received and asked what the polluters and their insurance companies had promised the Mayor in return for sabotaging the City's case.

- Reason 6: *Opposing counsel are now bypassing the City's counsel and are corresponding directly with the Mayor and City Council Members.*

Council Member Land questioned how many contacts, written or verbal, there have been with Mayor Hitchcock from environmental consultants, counsel, or insurance carriers regarding the PCE/TCE litigation. He stated that if Mayor Hitchcock is continued to be allowed to misrepresent the Council, then the insurance companies might as well be allowed into closed session meetings. He emphasized the importance of maintaining maximum confidentiality regarding settlement negotiations. Mr. Land reviewed various letters in *Exhibit 4* and read the following excerpt from the June 25, 2003, Memorandum and Order filed by Frank Damrell, Jr., United States District Judge: "Unless excused by the mediator, all parties, their counsel, their insurance carriers, their environmental consultants, and any other necessary

settlement representatives are ordered to appear..." In reference to the term "necessary settlement representatives," Mr. Land stated that settlement authority was given to the City's attorneys and the City Manager. Mr. Land recalled that at the City Council meeting of July 2, attorneys Stephen Meyer and Lori Gualco, who work for the insurance companies, were defending the Mayor's actions, and the issues that Mr. Meyer brought up were identical to the Mayor's. Mr. Land commented that the Mayor has a right to a difference of opinion; however, when she speaks on behalf of the Council it must be the voice of the majority of the City Council.

- Reason 7: *Lodi Ordinance No. 1594, Lodi Municipal Code Chapter 2.04, Section 2.04.190, outlines the City Council's role as it pertains to closed sessions.*

Council Member Land reiterated that the Mayor and Council Members have a duty to abide by Council decision. He referenced *Exhibit 5* pertaining to the City's closed session confidentiality regulations. He recalled that during a recent presentation Elk Grove City Attorney Tony Manzanetti informed Council that when a Member does not work as a body it brings dishonor to the process. He read the following excerpt from the League of California Cities resource guide: *"The mayor is the chief elected official of the city, whether directly elected as mayor or elected by a vote of the council. In this role the mayor is responsible to provide policy leadership to the council and to represent the council in public meetings. To fulfill this role effectively the mayor must be able to fairly represent the view of the whole council and the council must respect the mayor's role as its representative."*

Council Member Land warned that if the City is not successful in PCE/TCE litigation, it will cost each ratepayer thousands of dollars. Mr. Land stated that he could not sit idly by and allow Mayor Hitchcock to unravel a victory by the City, for which it has spent years and millions of dollars to achieve. He believed that Mayor Hitchcock has sided with the polluters and is working against the best interest of the City. He stated that Council cannot continue to have a Mayor who is in total disregard for the City Council she was elected to represent.

Council Member Land again asked Mayor Hitchcock if she would agree to the compromise previously iterated, to which she again replied that nothing had changed.

Council Member Land stated that he would abide by whatever decision Council made tonight. Addressing Mayor Hitchcock, Mr. Land stated that following Council and public discussion on this matter, he was prepared to make a motion for her censure.

PUBLIC COMMENTS:

- Norman King stated the he has lived and voted in Lodi since 1955. He expressed opposition to the censure movement as he felt it was inappropriate, divisive, would "cast a dark cloud" on the City's image as livable, lovable Lodi, and is directed at the wrong recipient.
- Reid Cerney stated that nothing the Mayor has said or done merits censure or removal from her mayoral office. On the contrary, he believed she should be recognized for her sterling performance in overseeing the City's business and finances. He noted that Ms. Hitchcock has served the community in various capacities for nearly 28 years. She has performed with excellence and an uncanny ability to make intelligent fiscal decisions, while keeping a sharp eye on the City treasury. He stated that the Mayor has consistently demonstrated superb leadership, and at times as a lone dissenter. He expressed trust in Ms. Hitchcock to serve the community with good judgment, faith, and conscience and believed that hallmarks of her character include compassion, diligence, and personal integrity.

- David O'Connor noted that he was a City Council Member candidate in the 2002 election and has lived in Lodi for approximately 20 years. He questioned whether the Mayor had believed the judge's order meant that Council Members must attend the mediation session and if anyone had thought to clarify the judge's intention. If the judge did order the Council to appear, then the vote not to attend should not have been taken. And if the order to appear did *not* include the Council, then the action to defy Council's vote was wrong. He stated that three options exist for those who disagree with a law or ruling: 1) follow it; 2) change it; or 3) break it and accept the consequences. He asked whether Mayor Hitchcock felt that she knew more about the law than the City's attorneys.

Mayor Hitchcock explained that Judge Damrell's order was filed *after* the Council voted not to attend the next mediation session. In addition, an e-mail was sent to Council from the City Attorney informing them of the notice to appear. She acknowledged that the judge's order could be interpreted differently. Ms. Hitchcock stated that she arrived too late to attend the mediation session; however, the judge expressed embarrassment to her about the order and made the comment that *"It doesn't really mean that all of you have to be there. It's good you've got your City Attorney, you, and the City Manager."* In reply to Mr. O'Connor, Ms. Hitchcock stated that she was certain she did not know more about the law than the City's attorneys.

Council Member Land again read an excerpt from Judge Damrell's order: *"Unless excused by the mediator, all parties, their counsel, their insurance carriers, their environmental consultants, and any other necessary settlement representatives are ordered to appear in person and participate in good faith in any and all future mediation sessions scheduled by Lester Levy, Esq."* He reiterated that Council has given the City's attorneys settlement authority. He believed that if the judge had wanted the Council to appear it would have been so stated in the order.

Mayor Pro Tempore Howard explained that earlier in the week, prior to the June 27, 2003 mediation session, the City Attorney had requested that the meeting be rescheduled due to surgery that one of the City's legal representatives would be having, which restricted the use of his arm for a greater period of time than was initially anticipated. Ms. Howard believed that the judge's order filed on June 25, 2003, was to clarify that meeting would take place on June 27 regardless of the request for a date extension due to medical reasons. She clarified the spelling of "counsel" as written in the order to appear. She stated that the City of Lodi and all Council Members are represented by the City Attorney in order to hear settlement offers and represent the City through this case.

Mayor Hitchcock stated that she interpreted the words "all parties" to mean the City Council.

Mr. O'Connor noted that he had worked as a paralegal and learned throughout the years that anytime he is ordered to appear in court, he is specifically named either by name or title, not by a group.

- Arthur Price noted that Mr. Land had read newspaper quotes from Ms. Hitchcock as far back as 1999, yet he nominated her for Mayor in December 2002. Mr. Price pointed out that, evidently, her statements were not a concern to Mr. Land at that time. He quoted the following statement from Supreme Court Justice Sandra Day O'Connor regarding her differences with Judge Stephen Breyer: *"The work we do is in a very intimate environment. The work we do is far too important to allow harsh words or differences of opinion to cause rancor. Tomorrow is another day."* Mr. Price asked Council to reason together, reach an agreement which will accommodate both points of view, and adopt a set of guidelines or ground rules that will satisfy all Members. He did not believe that any Member of Council has intentionally violated the spirit of the Brown

Act, though he believed that likely every Member has done so inadvertently. In reference to Council Member Land's concern that the City's strategy is being revealed to the opposition, Mr. Price stated that the attorneys for the opposition are already aware of the strategy, and he questioned who staff is trying to keep in the dark. He urged Council to let the proposed motion for censure die for lack of a second.

Mayor Pro Tempore Howard acknowledged that at the request of Arthur Price and Mr. and Mrs. Bernasconi she met with them last night to review the record keeping that they had done regarding the financial history of the litigation and their support for Mayor Hitchcock.

- Larry Mallory stated that because of this problem and the bickering that is going on, the citizens of Lodi are being forced to take sides. He believed there should only be one side – “team Lodi.” He asked why this matter was not settled in closed session. He stated that Mayor Hitchcock has been doing what the rest of the Council Members should have done, i.e. looking out for the citizens of Lodi and informing them about what is going on and what it is costing the taxpayers. He asserted that bad decisions were made from the start by the City Manager and City Attorney and they should be the ones being censured tonight. He asked how many times the City would have to be told by the courts to change course before something is done. He reported that the City of Stockton had a pollution problem, cleaned it up themselves for \$12 million, and then went to court to fight the responsible parties. Lodi could have handled this the same way. He stated that a lot of people are wondering if this matter is about Mayor Hitchcock or her husband, former assistant city manager Jerry Glenn.

In answer to Council Member Hansen, City Attorney Hays confirmed that the Brown Act would not allow the topic of censure to be discussed in closed session.

Mr. Mallory expressed concern about future interactions with Council Members and stated that the public expects a solemn pledge from each Member to move on and address larger City issues, commenting as Mr. Price had previously quoted, “tomorrow is another day.” He believed this to be merely an unwillingness for two people to meet half way, so that neither would lose face.

Council Member Hansen also disclosed that he met with Arthur Price and Mr. and Mrs. Bernasconi prior to the meeting.

- Dawn Squires voiced opposition to censuring Mayor Hitchcock. She recalled that Ms. Hitchcock was the only Member who took the time to visit with the opponents of the redevelopment agency project to find out what their issues were before making a decision. She noted that everyone on the Council has had conflicts of interest from time to time and questioned whether this issue was brought up tonight because women are in charge.

Council Member Land agreed that many Members have had conflicts of interest over the years and stated that his reason for bringing the matter up tonight was not gender related.

Addressing Council Member Land, Mayor Hitchcock commented that she was disappointed he made the assumption that a \$100 contribution meant that she was “bought out” and became a Trojan horse.

Mayor Pro Tempore Howard expressed her opinion that the topics being discussed tonight were not gender based.

- Camille Green stated that she was upset by Council Member Land's earlier comment asking Council not to be swayed by the audience. She reminded him that he and other Council Members represent the public, many of whom are present at the meeting tonight and expressing their opinions. She recalled that the redevelopment referendum proponents wanted Council to bring the matter to a vote of the people of Lodi; however, Council chose not to and indicated that it would amend and reintroduce the redevelopment ordinance again later. Ms. Green voiced opposition to the censure of Mayor Hitchcock and believed that she was looking out for the best interest of the citizens.

Council Member Hansen noted that he and Council Member Beckman were not on the Council at the time the vote was taken on the redevelopment issue.

- Ann Cerney believed that the motion to censure is divisive. She stated that the problem, i.e. the PCE/TCE matter, is shared by all the people in the City. She reminded Council that it serves at the pleasure of the electorate. No single Council Member serves at the pleasure of any other Member or Members collectively. As an attorney, she found it difficult to conceive how attendance at a mediation session could in any way have a bad effect at a trial on the part of the City. She commended Mayor Hitchcock for her diligence to duty in attempting in every way possible to receive as much information as she can and urged other Council Members to do the same. She recalled that the Elk Grove City Attorney who recently gave a presentation to Council recommended that a non-majority of Council Members be given authority to attend mediation sessions when ordered. Ms. Cerney perceived the censure and reorganization request as an attempt to find someone at fault. She believed that the problem lies with a faulty financing agreement, which was made during a different economic time, and she urged Council to pursue avenues to solve this dilemma.

In answer to Council Member Hansen, Ms. Cerney stated that it was inconceivable to her how anything that any Council Member has said would encourage those who oppose the City in the PCE/TCE litigation. She stated that the judge is not on the City's side and urged Council to "look at the score," not look for blame, and find out how to get out of the situation.

- Jerry Glenn stated that Margaret Talbot had allocated her five minutes to him. He stated that he has been married to Susan Hitchcock since July 1, 1995. He served as assistant city manager in Lodi from 1973 to 1996. He admonished City Manager Flynn for applauding during Council Member Land's presentation, as he has a duty to remain neutral. He stated that the public hopes and expects that Council would not always agree on issues, because differences of opinion are healthy and promote a deeper discussion of issues. He believed that tonight's discussion has turned from differences of opinion to ones of personal attack. Mr. Glenn presented the following information related to Council Member Land's potential improprieties and conflicts of interest:
 - Shortly after Council Member Land received \$3,000 in contributions from the Firefighters to run his first campaign, he hosted a barbeque for them and part of the money came from City funds.
 - Council Member Land was the strongest advocate on the Council for a soccer facility. The opponents were a group of agri-businessmen who live outside the city limits of Lodi. During Mr. Land's reelection campaign in 2000, he suddenly changed his mind on the project and his vote killed the project. His subsequent statement of campaign contributions showed well over \$1,000 from the same agri-businessmen against the developer of the soccer complex. Mr. Glenn pointed out that the total contributions to Mr. Land's campaign in 2002 were \$22,000, and Ms. Hitchcock's totaled approximately \$13,000.

- Council Member Land is employed as an officer of Farmers and Merchants (F&M) Bank, at which the City has the largest amount of money deposited than any bank in Lodi. Mr. Land has never suggested that the City's funds be more evenly distributed, but Ms. Hitchcock has, even though she owns shares at F&M Bank. Mr. Glenn stated that F&M Bank is a defendant in the groundwater contamination litigation. Mr. Land received a sizable campaign contribution from the Chief Executive Officer of F&M Bank, and Mr. Glenn wondered what promises he may have made to look after the bank.
- Council Member Land questioned Ms. Hitchcock's integrity in reappointing Randy Heinitz to the Planning Commission, even though he had originally appointed him. Mr. Glenn explained that he is an independent contractor, and though he receives no salary from Mr. Heinitz, his real estate sales commissions run through Mr. Heinitz' office because he is a broker.
- Mr. Land chastised Dennis Lewis for having the temerity of asking the City to loan the Adopt-A-Child Foundation money to complete repair of a City-owned building. He informed Mr. Lewis that the City is not a bank and if it loaned out money it would be competing with private enterprise. Two weeks later, when considering action on a policy that requires a developer to pay for City infrastructure improvements, Mr. Land stated that he did not believe it was fair that the developer take on the full burden and voted to make a loan to the developer. Mr. Glenn wondered if the City operated as a bank for those in Mr. Land's favor, and not so for individuals not in his favor.

In recalling an analogy that Mr. Land used previously, Mr. Glenn stated that he "plotted his course, and set his sail" toward the actions this evening. Mr. Glenn noted that he spent 25 years in the Navy, advancing to the rank of Captain, and believed that only a fool would go to sea and not get a position report at least every day. The City has gone six years and not once adjusted its position on the groundwater contamination legal strategy. Mr. Glenn stated that, "the storm is about to sink the ship."

Addressing Mr. Land, Mr. Glenn stated that he had opened himself up to this type of examination when he questioned the character and integrity of Ms. Hitchcock. The people of Lodi have known Ms. Hitchcock for over 20 years beginning with her tenure on the Planning Commission and, although everyone may not agree with her on all issues, they know she is honest and open. He urged Council not to support Mr. Land's requests this evening for censure and reorganization.

City Manager Flynn apologized for applauding during Mr. Land's presentation, acknowledging that it was improper.

City Attorney Hays noted that Mr. Glenn made a material misstatement in regard to F&M Bank being a defendant in the groundwater contamination case. The Department of Toxic Substance Control had initially named F&M Bank; however, it subsequently realized it had the wrong name and address and has since corrected it to Hotel Lodi Partners, which was a location where a dry cleaner had once existed in one of the store fronts in the old Lodi Hotel.

- Lori Gualco, chief counsel for Jack Alquist and Guild Cleaners, pointed out that there were at least ten Envision Law firm representatives present in the audience who have been applauding heartily to everything that has been said *not* in support of Ms. Hitchcock. She surmised that the City would likely be receiving a bill for each of the representatives to be in attendance. She asked Mr. Land who prepared the PowerPoint presentation he used this evening.

Mr. Hays objected, stating that the City would not be charged for Envision Law firm representatives attending the meeting.

Ms. Gualco stated no Members of the Council have provided information regarding the City's legal strategy in the PCE/TCE litigation. It has been attorney Michael Donovan and City Attorney Hays who in numerous newspaper articles were quoted as saying that they were going after the insurance companies to get the money to clean up the contamination. She noted that there is nothing wrong with that goal; however, the means have been lacking. Ms. Gualco reported that she was in attendance at the May 19 mediation session held at Hutchins Street Square. After the meeting she witnessed Mr. Donovan speaking excitedly to Mr. Land. Ms. Gualco indicated that Mr. Donovan was using profanity and she told him to stop it. She then went to report to the mediator what she heard Mr. Donovan say and saw that Ms. Hitchcock was speaking to him; however, she did not hear any of their conversation.

Ms. Gualco stated that the City has spent \$16 to \$21 million so far on the PCE/TCE litigation. Mr. Donovan's hourly fee is \$475. In addition, Mr. Donovan will receive 20% of any settlements reached in the case. In reference to the judge's order, Ms. Gualco believed that the term "parties" and "necessary representatives for settlement" included the City Council. She urged Council to become involved in the process and educate the public on what is going on with regard to attorney fees and expenses.

- Evelyn Pizzo commented that she originally came from Guatemala and is now a legal resident of the United States. She stated that she lives in the east side of Lodi where there is much poverty and sadness. Ms. Pizzo read from the following bible scriptures:
John 8: 6-8 Teacher, this woman was caught in the act of adultery. In the Law Moses commanded us to stone such women. Now what do you say? ... Jesus said to them, "If any one of you is without sin, let him be the first to throw a stone at her." At this, those who heard began to go away one at a time...
Colossians 3: 12-14 Therefore, as God's chosen people, holy and dearly loved, clothe yourselves with compassion, kindness, humility, gentleness, and patience. Bear with each other and forgive whatever grievances you may have against one another. Forgive as the Lord forgave you. And over all these virtues put on love, which binds them all together in perfect unity.
- Ron Bernasconi thanked Council Members Beckman, Hansen, and Mayor Pro Tempore Howard for meeting with himself, his wife, and Arthur Price. He stated that he gave all Council Members a package of information. He referenced a 1999 Sacramento Bee article, which stated: *"The City Council has adopted an unusual Donovan-crafted law giving itself broad authority. Donovan expressed no doubt that the City would recover all monies and expenses incurred. According to Randy Hays, the way the law is written we can't loose."* Mr. Bernasconi noted that Lehman Brothers provided \$16 million to extend the legal battle. In the article, Keith Land proclaimed, *"When you've got the backing of Wall Street you've got a case."* Skeptics included Council Members Nakanishi and Hitchcock about whom the article reported "they would have liked to have seen more money go into the ground sooner, restoring the water supplies or at least containing the spread of contamination, but they believe it's too late to reverse the course set by the incumbents in 1996." Mr. Nakanishi was quoted as saying, *"It is very difficult to stop the train from going forward."*

Mr. Bernasconi expressed concern about Mr. Land's attacks regarding conflicts of interest, campaign money buying the vote of Ms. Hitchcock, and his Trojan horse theory. He believed that Mr. Land should apologize to Ms. Hitchcock for making such scurrilous and reckless assertions. He noted that it was Mr. Land, who works for a downtown bank, who voted to implement a strategy designed to take the risk away from downtown property owners. He stated that a December 1999 Public Financial Management report raised serious questions about the wisdom of borrowing \$16 million at 20% to 25% interest and paying \$3.25 million in commitment fees. On November 3, 1999, Council, on motion of Steve Mann seconded by Keith Land, voted 4-1, Susan

Hitchcock dissenting, to borrow \$16 million. The December 21, 1999, report states that the money the City borrowed would double every three years, growing to \$120 million in ten years. Mr. Bernasconi stated that no careful steward of public resources would ever be so reckless as to borrow money at 25% interest. At the July 2, 2003 Council meeting Ms. Hitchcock had to ask City Attorney Hays for a copy of a ruling. Mr. Bernasconi contended that failing to give Council Members rulings, settlement offers, and notices of hearings in a timely manner is a breach of duty. At the July 2 meeting Mr. Hays' excuse for not giving the Council the ruling was that it had nothing to do with the City. Mr. Bernasconi read from the ruling, *"Sound public policy runs counter to Lehman's claim of privilege. The business transaction between Lehman and Lodi to fund environmental litigation for profit can undermine the effective and efficient remediation because the investment bank seeks not to remediate; instead, it seeks to recover an extraordinary profit. To the extent that Lehman's financial arrangements with Lodi conflict with the goal of cleaning up environmental contamination, sound public policy counsels against such an agreement."* Mr. Bernasconi pointed out that if the City Attorney had presented the settlement offers to Council, Ms. Hitchcock would not have been in the position at the mediation session of admitting that she was not aware of it. Mr. Bernasconi recalled Mr. Hays saying he did not give the settlement offer to Council because it was not consistent with parameters established in 1997. Mr. Bernasconi pointed out that two of the 1997 Council Members were not reelected. He stated that there has been a pattern of failing to apprise the Council and it cannot be allowed to continue because it is impossible for Council to do its job effectively unless it receives honest, unfiltered information from the City Manager and City Attorney.

Mr. Bernasconi reported that in April a federal judge ruled that the dry cleaning business would no longer be forced to investigate. Judge Damrell cited what he called the City's *"belated admission that it is potentially responsible for the contamination."* Referring to it as, *"an unusually protracted and costly litigation,"* Judge Damrell said, *"The City's strategy had led to unproductive detours from the ultimate goal of dealing with the City's groundwater contamination crisis."* Mr. Bernasconi stated that Council was not advised about Judge Damrell's statements at the July 11 hearing, which included *"...if there is going to be a formal mediation, under the lead DTSC, what is the role, why does the City want to spend more money to get injunctive relief when the state has gone ahead and assumed that role in place of the City."* Further, Judge Damrell stated, *"Why don't you talk to the DTSC about this? It seems to me that they have the resources, the expertise, they are taking on the role, obviously they are doing this because the City has not been able to assume the lead agency role sufficiently or adequately. Here you have the state doing exactly what should be done. It seems to me less expensive to spend money, than to let the City continue with enforcement action. It strikes me as being redundant, highly expensive, and unnecessary."* Mr. Bernasconi stated that because of the way the agreement is designed the City would have to get \$40 million before any money can be spent on clean up of the contamination. If the City accepts settlements without cash it would have to take the money out of the general fund. Mr. Bernasconi stated that it was *not* a non-recourse loan. He believed it to be a reckless, irresponsible act, and now that it is unraveling there is an attempt to find a scapegoat.

Mr. Bernasconi stated that City Attorney Hays was forced to resign after fifteen years in Redding. He read the following from a newspaper article, *"Council kept in dark. Top Redding officials knew for five months that insurance was missing on \$38 million power turbine projects, but withheld the information from the City Council. McMurray said he, City Attorney Hays, and former City Manager Robert Christopherson, knew in 1993 the Santa Rosa developer had not acquired the performance bonds for the turbine projects. Together with the electric department director, they opted not to tell the City Council because the law would obligate them to inform the Council in public."* Mr. Bernasconi

stated that the unlicensed contractor walked off the site and Mr. Hays said that it was not always necessary to have a contractor's license to enter into a contractual relationship with the city. The State Licensing Board, however, stated that the city would have no legal standing in court if it decided to sue. The excuse given for not getting the bonds was that the project would not have gone forward. When the subcontractors walked off the site because the unlicensed contractor was not paying them, the city became at risk for \$1 or \$2 million, and the Redding Council got rid of the City Manager, City Attorney, and Assistant City Attorney. Mr. Bernasconi stated that the Council needs to focus on the root cause of the problem by addressing the misconduct of staff, not the Mayor.

Mr. Bernasconi stated that if an apology is due tonight, it is owed by the City's counsel who called the Mayor a pejorative word that refers to a female dog.

Michael Donovan aggressively objected to the allegation.

RECESS

At 10:05 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 10:17 p.m.

I. REGULAR CALENDAR (Continued)

I-1

(Cont'd.)

- Jane Lea spoke in support of Mayor Hitchcock noting that she is accessible and popular in the community. Though Ms. Lea acknowledged that she does not always agree with Ms. Hitchcock, she takes the time to discuss issues and responds to citizen concerns. She warned Council Members who will be seeking reelection to consider what 4,000 less votes would mean to them.
- Eileen St. Yves stated that a recent newspaper article reported that one third of the money spent on the litigation has gone to the law firm and over \$6,300,000 came out of the City water fund. Ms. St. Yves reported that she had asked City Attorney Hays for two years to give her an accounting of the litigation costs and he refused. She stated that the City Attorney has a duty to keep all Council Members fully informed. She believed that since 1993 the City Council has not worked as one body and it appears to be getting worse. She complained of the bickering that is occurring between Council Members and threatened that recall may be the only way to rectify the situation.
- Mark Trovinger believed that a lot of the accusations presented by Council Member Land were overblown and outrageous. Mr. Trovinger stated that Mr. Land should have based his presentation on known facts, not supposition or exaggeration, and by doing so he has damaged his credibility.
- Frank Alegre spoke in support of Mayor Hitchcock. Although he does not always agree with her, Mr. Alegre stated that he appreciated the fact that she asks questions and carefully considers matters before making a decision. Mr. Alegre reported that he investigated the City during the years 1992 to 1994 and found misconduct related to expense accounts. He stated that the people elected Council to run the City; not to allow the City Manager and City Attorney to run the Council. He was pleased that Mayor Hitchcock has been attending mediation sessions because the public needs to know the truth. He encouraged other Council Members to do the same. He believed that Council Member Land's actions are dividing the people of the City. He urged Council not to move forward with the censure or reorganization.

- Carol Meehleis suggested that the Mayor be certain that she has support when she is in a leadership position and championing a cause or opinion. She believed that the Mayor should always speak for the City and suggested that at least two Members attend mediation meetings so that there is certainty about what is heard. She encouraged Council to work on a compromise and come to an agreement about how it will represent Lodi.
- Betsy Fiske interpreted the word "parties" in Judge Damrell's order to include the City Council. She pointed out that if the City loses the lawsuit there will be no money to pay for the cleanup, and if it wins, there will be no money for the cleanup because it will all go to Lehman Brothers. She believed that the only winners in this situation will be the attorneys and Lehman Brothers. She recalled that at the July Council meeting, Mr. Land had mentioned that he attempted to meet with opposing counsel Lori Gualco three times, but she canceled the meetings. Ms. Fiske asked how that would differ from Ms. Hitchcock meeting with the mediator. She had understood that cleanup costs for the contamination would range from \$20 million to \$200 million. She questioned why Mr. Land was quoted in the paper as saying that it would cost the ratepayers \$100 per household for 20 years. Ms. Fiske calculated that with 24,000 households, this would amount to \$576 million. She accused Mr. Land of using scare tactics to get residents to go against Ms. Hitchcock and not look into this matter more deeply. Ms. Fiske was astounded that there were ten Envision Law firm employees in the audience tonight and felt certain that they would not be attending without compensation.

Council Member Land explained that every time he phoned Ms. Gualco to inform her that the City Attorney would also be attending, she canceled the meeting. He stated that the cost of the litigation could amount to an increase in rates of four to five times what citizens are currently paying. The polluters in Lodi want ratepayers to pay for the cleanup. The city of Chico had the same problem, DTSC started the cleanup, and it sent a \$1.6 million bill to a 93-year old person who had a dry cleaning business during 1950-60. Mr. Land reported that of the \$20 million that has been spent, \$15 million has been for defense costs. In reference to the \$16 million loan from Lehman Brothers, Mr. Land explained that if the City is victorious it will have to repay them, and if the litigation is unsuccessful, the City does not owe them anything. He believed that the Council has acted in good faith by seeking payment from the insurance companies.

Ms. Fiske surmised that someone thought there was "a sweepstakes win" here and the City signed a contract with Lehman Brothers and Michael Donovan. It was her understanding that Mr. Donovan cannot be fired without the consent of Lehman Brothers. She expressed bewilderment about why the Council would agree to pay 20% to 30% interest on a loan.

- Jack Flockhart noted that he was born in Lodi's Mason Hospital. He asked Council whether the City could afford to stay in the litigation, and expressed concern that it would be continued until the City is bankrupt. He believed that the insurance companies have better attorneys than the City does.

Addressing Council Member Land, Mayor Hitchcock objected to his comment that \$15 million has been for defense costs from people suing the City. She stated that it was untrue, and that most of the City's costs were for the City suing others and appealing decisions that it lost.

Mayor Hitchcock read the following statement:

Before directly answering Council Member Land's charges, which have resulted in a call for my censure and removal as Mayor, I would like to provide you a little more information as to my stand on the issue of cleanup of the City's groundwater due to PCE/TCE contamination. I know Mr. Land says this has nothing to do with PCE/TCE contamination, yet most of his presentation was on this topic. I do not want the citizens of Lodi to be forced to fund the cleanup of our groundwater. I think it was a mistake in the first place for the City of Lodi to assume this unknown financial liability to guarantee cleanup and that is exactly what Council Member Land and four other Council Members did over six years before I was elected to the Council. That is water under the bridge now, but not only did the City assume liability, we paid the State Department of Toxic Substance Control a \$1 million fine for the City's involvement in the pollution, due to leaks in and lack of maintenance to our wastewater system and the right to assume responsibility for cleanup. I would like the insurance companies who insured the responsible polluters to pay for the cost of cleanup and if anyone is saying anything differently they are misinterpreting or purposely misstating my comments and actions; however, I have a great deal of difficulty agreeing with the City's current litigation and settlement strategy for groundwater contamination cleanup that has resulted in spending over \$20 million in attorneys' fees and associated costs to sue businesses in the City of Lodi. The proposed strategy was supposed to avoid these suits against our businesses, at least that is what I have been told by former Council Members who bought into the strategy; however, City Attorney Hays knew all along that the City and other named litigants would be suing local businesses, as he stated when the global action (as he called the first lawsuit) begins, everyone will be suing everyone else. Early on I expressed my concern regarding litigation costs without resulting cleanup and was told I should not question this in public as it could jeopardize the City's legal strategy. The cleanup should have been left to the State to seek the cleanup. The City is suing people that are far removed from the pollution, further removed than even you or I. For example, we are suing the Beckman Company, a stockbroker, for responsibility for groundwater contamination. The principals of that business have incurred huge sums to back the City in litigation and have explored bankruptcy. I do not think the role of government is to go around suing our businesses for something they had nothing to do with. Yes, the City is also suing people who we believe are directly responsible for leakage of the PCE/TCE into the groundwater. Because we have spent so much time and money on litigation and none on cleanup, the State has now stepped back in and is taking the role of lead agency and is ordering cleanup. Judge Damrell's latest remarks in court on July 11 state, "They are taking the role, obviously they are doing what they are doing because the City was not able to assume its lead role agency sufficiently or adequately and that's why they are doing what they're doing." Judge Damrell is very critical of the City's ongoing strategy of litigation and asked, "Why does the City want to spend more money to get injunctive relief when the State has gone ahead and basically assumed the role in place of the City?"

Another action that has put the City in a bad position is, after spending \$6 million of reserves from the water fund, the City borrowed \$15 million to fund ongoing lawsuits and appeals in a highly unusual bond financing scheme at an interest rate that could go as high as 30%. The only way to pay off the debt is to collect money, and the financing agreement all but disallows offers to cleanup the pollution, and that is the big disagreement between current settlements and the City. We have agreed to give our outside attorney 20% of all the money collected and there is absolutely no incentive whatsoever for the City's outside attorney, Mr. Donovan, to reach any settlement for cleanup of the water by those responsible, because it does not result in cash to pay for ongoing litigation. As a matter of fact our agreement states, "If the City accepts a non cash settlement, when any certificates are outstanding, the City will deposit into the recovery account as program receipts from any available funds of the City in amounts sufficient to pay certificates that have accrued value equivalent to the dollar value of the non cash settlement." Therefore the City finds itself in a position of having to demand money from the insurance companies while refusing to allow them to clean up. At 20% interest the amount owed on the bond is nearly \$30 million. At 24% interest the amount due doubles every three years.

It is my desire to end this ridiculous ongoing payment of attorneys' fees at the earliest possible moment and put the money toward cleanup. The Council was assured four years ago by our City Attorney and City Manager that the suit would be over in four years (that's now) and the money would be rolling in from insurance companies and the cleanup well underway. I asked then, "What if there were delays?", and I was assured by the attorneys that they had considered every contingency and there was no way it could go longer than four years. The time has arrived and now we are told by our attorneys that it will be 2006 before they can even tell us exactly what the extent of the pollution problem really is. In the meantime litigation goes on and the attorneys' fees continue to mount. Currently the cost to the citizens is running an average \$350,000 a month and the last two months have been millions.

This is a complex issue, and I am looking for ways to limit the City's liability. I readily admit I do not have all the answers; however, I am a solution seeker and that is why I have been persistent in asking questions and doing what is necessary to gain as much knowledge as possible. What concerns me most is: 1) the City has lost most motions and appeals in this matter in court including now being considered a Potentially Responsible Party to the pollution, which prevents the City from collecting attorneys fees for suing other parties – and that is what we spent all our money on; 2) the mediator has indicated he believes the City is on a course to run up attorneys costs and believes that City Council Members were not aware of other alternatives being put forth in mediation sessions; 3) our City Attorney and hired outside attorneys have provided limited information to the City Council regarding this very important and costly groundwater contamination issue. We were not receiving the outcome of all court decisions, only those favorable to the City, until I requested all of them and then we only received filtered reports relating only positive impacts to the City. I then requested actual transcripts so I would have a complete picture of how the City is fairing in litigation, but I still have to ask for copies when I hear through a third party that action was taken in court. The City Attorney still has not provided the Council with Judge Damrell's transcript of the July 11 hearing, which was available last week. (I guess Mr. Bernasconi provided it to all of us tonight.) When one does not receive the whole truth, one wonders why. Some Members of Council seem satisfied that everything is fine to the extent that they refuse to question our present strategy or even consider a second opinion, which I have asked for on more than one occasion. Indeed it took me time and a very concerned mediator for me to actually realize that we have other viable options. Because the mediator was concerned with the amount of money being spent for litigation without cleanup and was concerned that the City Council Members were not aware of alternatives being offered through mediation he invited me and the rest of the City Council to attend the mediation hearings. Although the mediation hearings are confidential, and I cannot share the details, I can say that after the hearings I am convinced there are other alternatives to our present course of action that will reduce this ongoing necessity for the payment of attorneys' fees and direct funds toward cleanup. I want to stress again that I did not go to the mediation session uninvited; I was there at the invitation of the mediator. My quest for information is not out of order, it may be something others do not want, but I believe that I am doing my job to best represent the best interests of the Lodi citizens. My actions and statements are geared toward getting the insurance companies to pay for cleanup and putting an end to this seemingly endless litigation and associated attorneys' fees. And yes, the defendant's attorneys will benefit because they will get to direct their money toward cleanup and stop paying the ongoing attorneys fees through all these suits and motions and appeals. I want to reduce the City's liability, and certainly I am not in favor of increasing water rates. I too live in Lodi and have family living here and do not want them to suffer needless rate increases. I do not believe local newspapers are in favor of increasing rates nor allowing insurance companies to get off scott free. I take comfort in the fact they do support my calls for openness in the City's dealings with the groundwater contamination issue and allowing the public to have all the necessary information.

To be honest I have been unclear as to exactly what Council Member Land's concerns are because he has never approached me directly concerning them. He did make a call to Deputy City Manager Janet Keeter and asked her to contact me and present an offer to me, which would result in the removal of the two items of censure and removal as Mayor from the agenda, but it was inappropriate for him to direct her to make such a presentation to me. If he heard nothing else from our special meeting we held last week regarding the duties, authorities, and responsibilities of Council Members, it should have been that Council Members have no authority to direct department heads, only to ask for information. I quickly ended the conversation with Ms. Keeter and told her Council Member Land should contact me directly; however, he has never contacted me directly up until this morning, he called me. But instead, he calls the newspaper for press coverage and I read about his concerns in the newspaper. This is most unfortunate and has resulted in a terrible disservice to both the City Council and the citizens of Lodi. I have had a difficult time determining exactly what Council Member Land's real concerns are as they keep changing. As a result it is difficult to know his true motivation for his actions or understand what he hopes to accomplish with his allegations and the outcome of a censure or removal of Mayor; however, I will attempt to answer honestly and to the best of my ability the allegations he made channeling through the newspaper.

First, Council Member Land criticized the fact that I spoke to the mediator during a mediation session I attended. Yes, I did speak to the mediator – remember the mediator asked the Council to attend mediation sessions because he sensed we were not receiving information about what was occurring in mediation, about settlements being offered, and it appeared we were on a course designed to incur ongoing attorneys' fees. In mediation like the City is currently involved in, the mediator does not take sides in the litigation, nor does he share discussions made in confidence; he works, what he looks for, and works for is common ground to work toward settlement acceptable to both parties. An offer from the defendants in the groundwater contamination lawsuit was presented for Council consideration and rejected by the City Attorney and a substitute offer was made. The Council was not aware the offer had ever even been made, nor did it receive any knowledge of the contents of the offer. After the mediation session was over the defendant's attorneys had left the room, and in the presence of Council Member Land, City Attorney Hays, and City Manager Flynn, I told the mediator that the City Council had never received a copy of the offer to consider and did not have knowledge of the counter offer. City Attorney Hays and Council Member Land would have the Council and the public believe that my comment to the mediator working on our behalf was to undermine City litigation strategy. I wonder if they are not looking for a scapegoat in this failing litigation strategy.

Council Member Land initially called for my censure because I announced a vote that was taken at the conclusion of a closed session. First, it was an illegal closed session to begin with for several reasons. The topic posted litigation between the City of Lodi and Busy Bee on the groundwater contamination did not describe the topic addressed. The Attorney General states, "A description must be sufficient to provide interested persons with an understanding of the subject matter that will be considered." The topic discussed in closed session had nothing to do with Busy Bee, but with Council Member Land and our City Attorney's concern over my attendance at the mediation sessions and Mr. Land's written three-point presentation of a proposal to censure me, prohibit me from attending all future sessions, and to request Council direction to send a letter to our mediator stating that Council had given the Attorney authority to deny and present offers. Council Member Land's criticism of my announcement of the vote is disturbing because the Brown Act under section 54957.1 states, "The legislative body of any local agency shall publicly report any action taken in closed session and the vote of abstention of every member present therein." Perhaps even more disturbing is the fact that the City Attorney remained mute on my reporting of the vote when he should have informed Council of their legal requirement to disclose the action vote. He also failed to inform Council Members during the closed session discussion that, under the Brown Act, they could not discuss an elected official.

As a matter of fact, it was City Attorney Hays that introduced the closed discussion announcing how distressed he had been, to the point of physical illness, over my attendance at mediation hearings and his assertion that I was jeopardizing the City's legal strategy. After he made an initial introduction, and became somewhat emotional, Council Member Land jumped in and presented his three-point recommendation. Ultimately a vote was taken to prohibit the attendance at mediation sessions by any Member of the Council for two weeks. The whole session did not meet the strict guidelines set forth for closed sessions and the action could be declared null and void by a court if I were a litigating person and chose to go that route.

I did go to Sacramento to attend a mediation hearing after receiving an e-mail sent to City Council members stating that Judge Damrell had ordered us to appear. The e-mail was addressed only to City Council Members; however, the mediation session was on my last day of school and by the time I arrived the session was already over, so I did not attend a meeting as Mr. Land claimed. Since the mediation session that Council Member Land is critical of me attending was actually over by the time I arrived I did not have an opportunity to attend or participate in the meeting. I did, however, meet at the request of the mediator with him and the City Attorney where the mediator summarized what had occurred during the morning session. I then bought Mr. Hays lunch.

Then in last week's News-Sentinel, Council Member Land alleged I was working on the inside for the defendants in the PCE/TCE groundwater contamination litigation because I had received a \$100 contribution from Jack Alquist, owner of Guild Cleaners, to my campaign when I ran for election in 1998 and again during my reelection in 2002, and they put me on the Council, and now I was their Trojan horse. I can see the headlines now; City spends \$20 million, Council Member bought for \$200. I can assure you, two \$100 contributions did not make or break my election though I certainly appreciate the vote of confidence that the contributions represented.

Council Member Land then made the allegation that it was unethical for me to recommend for reappointment his initial appointee, Randy Heinitz, to the City's Planning Commission after he had voted to concur with the reappointment. He intimated that my vote was somehow linked to financial gain received by my husband working with Mr. Heinitz as an independent contractor in his real estate office. Actually my husband receives no compensation from Mr. Heinitz but vice versa; however, all commissions are run through Mr. Heinitz office because he is the broker. I proudly recommended the appointment of Mr. Heinitz to the Planning Commission because, in my view, and the view of others working with him in his capacity as a Planning Commissioner, he has done a good job, had an excellent attendance record at meetings, and has continued to educate himself in planning matters by attending the League of California Cities Annual Planners Institute each year. I am sure I saw many of the fine quality traits that Council Member Land acknowledged in his initial appointment of Mr. Heinitz to the Planning Commission.

Now Mr. Land stretches to declare it was inappropriate for me to vote to affirm the disbanding of the Lodi Redevelopment Agency after it was recalled by a successful voter initiative by the City of Lodi, because my husband owns property in the proposed project area. However, my earlier inquiry of the City Attorney yielded a response, "There is no conflict, as it is an affirmation of administrative action."

Now tonight Mr. Land has a new and different story. He states I yelled at Mr. Donovan in the hallway within earshot of others. Council Member Land, City Attorney Hays, City Manager Flynn, and outside attorney Donovan all know this is a lie. It was not my remarks that were overheard by others, but Mr. Donovan's profane remark directed at me and said to Council Member Land, Mr. Hays, and Mr. Flynn as they walked down the hall of Hutchins Street Square. His comments were also overheard by other attorneys in the building. After hearing of the profanity directed toward me I confronted Mr. Donovan outside the rotunda of

Hutchins Street Square in the presence only of City Attorney Hays, City Manager Flynn, Council Member Land, and attorney Donovan, and I told Mr. Donovan that he was unprofessional. Mr. Flynn attempted to pacify the situation stating, "People say things in the heat of the moment." Mr. Donovan refused to talk to me, threw his arms up in the air, and began walking away. As he did so I told him, "If I had three votes I would have him fired." If I was guilty of an indiscretion it was telling Mr. Donovan that I would have fired him if I could, this is as true a statement tonight as it was a month ago. I am not sure what issue Council Member Land will attack me on next, perhaps my hair color.

As a side note, if a Council Member had voted for the City to assume an unknown liability that was not the City's responsibility and then bankrupted the City's water fund by draining it of \$6 million and then borrowed an addition \$15 million at a variable interest rate up to 30%, and voted to hire an attorney at \$465 an hour, plus 20% of everything collected for cleanup in a financial agreement that has no incentive to accept offers of cleanup and had seen time and again that court rulings are mainly against the City, and have steadfastly refused to take a second look at the present strategy, I imagine that Council Member would be doing everything imaginable to quiet a voice of dissention and stifle another elected official's ability to obtain information in order to shift the blame in preparation for a total failure of the litigation and settlement strategy. It appears that Council Member Land has a need to build a case that will be efficiently persuasive to my colleagues on the Council not only to censure me, but to have me removed from my position as the City's Mayor. It bothers me greatly that for whatever his reason he has such a motivation; however, I find it most hurtful and distressing that Council Member Land attacks my personal integrity and challenges my ethics. This is a very serious issue. A vicious action and totally without merit, which tells me more about Council Member Land than anything else.

I will conclude by saying that I have given and will continue to put forth my very best effort, to do my duty to the citizens of Lodi who have placed a tremendous trust in me by electing me to this legislative body. I have not purposely done anything to bring dishonor to this body or to jeopardize the outcome of any lawsuits, and I am truly sorry that Council Member Land has such personal disagreement with me and is airing it at the expense of the City Council's reputation and that of the City of Lodi. As the city attorney from Elk Grove, Mr. Manzanetti, told the Council the other night, it is our duty and I would add, our sacred duty, to speak out when we disagree and promote our positions. I have great concern regarding the current handling of the PCE/TCE groundwater contamination litigation and settlement strategy, and I will continue to advocate for the minority opinion and continue to gather as much information as I can in order to make the best informed decisions on behalf of the citizens of Lodi and will continue my efforts to influence you, my colleagues, so that hopefully my concerns will become yours and perhaps the minority opinion will become the majority opinion on the Council. It is up to you as representatives of the people of Lodi to decide whether to censure me or no, and to remove me as Mayor or not. Of course I do not want the City Council to censure me, and of course I do not want to be removed as Mayor, but it is your choice. Should you make that choice, then I shall wear that censure as a badge of courage and honor because it will be for doing my job in the best way I know how. May God bless you in reaching your decision.

Council Member Land stated that there were many errors in Ms. Hitchcock's presentation. He denied having publicly brought forward the conflict of interest issues related to Randy Heinitz and the redevelopment project. He stated that they were the opinions of the newspaper.

Council Member Beckman stated that it is important to stay focused on the specific conduct that caused this matter to come before Council. The question is whether or not Mayor Hitchcock violated a City Council resolution. Whether it was for good, bad, or noble reasons would not in itself justify such action. In reference to Judge Damrell's order, Mr.

Beckman interpreted the term "necessary parties" to mean people who can negotiate, which is commonly accepted to be the City Attorney and City Manager. The order was issued directly after the City had shown intent not to be present at the mediation session, due to medical reasons of one of the City's attorneys. He believed it to be merely a coincidence that the order was made just following Council's vote not to attend mediation sessions for a 14-day "cooling off" period. Only minutes after Council's vote not to attend (and prior to the judge's order) Ms. Hitchcock declared her intent to violate Council's resolution, and in fact, did attend the next mediation session. Though the mediation session had concluded by the time Ms. Hitchcock arrived, she did speak with the mediator. Mr. Beckman noted that each Council Member took an oath to uphold the laws of the Constitution of the United States, the Constitution of the State of California, and the City of Lodi. When a decision is made by vote of a majority of the Council, it is binding on all Members. He did not believe that Ms. Hitchcock's violation rose to the level of removing her as Mayor; however, he did feel that it required some type of action.

Council Member Hansen recalled that the city attorney from Elk Grove explained to Council that when one Member of a Council is tarnished, it affects everyone, and when an individual Member violates the vote of the Council it brings dishonor to the system. He asked Mayor Hitchcock how going against the vote of the Council was justified.

Mayor Hitchcock recalled that she had begged Council not to vote to prohibit attendance at the upcoming mediation session because, as she had explained, she had to do what was right for the citizens of Lodi and did not want to be placed in that position, i.e. of attending regardless of the vote. She reiterated that the closed session was held to discuss her behavior, which is a violation of the Brown Act, and consequently Council's action during the illegal meeting would be considered null and void. The agenda item did not mention the intended purpose that Council Member Land and City Attorney Hays had in mind.

Council Member Hansen reported that in preparing for tonight's meeting he met with some predecessors on the Council, one of whom raised the issue that with Mayor Hitchcock being so vocal against the legal strategies of the City, it might lend itself to some personal liability on her part and because of that, Mr. Hansen now supported getting another opinion on the litigation. Mr. Hansen stated that he worked very hard during his career not to be sued personally, or held liable, and he would like questions answered pertaining to that area and others. He recalled that Council had also discussed having a representative from Lehman Brothers provide a presentation on the financial package. He believed that political will was vital in these types of cases in order to be successful. He expressed concern about opposing attorneys appearing at Council meetings, defending the actions of the Mayor, and criticizing the Council. He had felt from reports he received from City Attorney Hays that the City was making progress and favorable things might be occurring. He acknowledged that he may not have been as diligent as he could have about asking tough questions and would attempt to ameliorate that in the future. He respected the Mayor's right to serve in that role; however, he encouraged her to guide the meetings along more expediently in an effort to conduct the City's business in a more timely fashion. Mr. Hansen stated that he was not in favor of censuring the Mayor. He did hold her partially responsible for what has occurred this evening, i.e. the numerous negative accusations brought forth. He suggested that in the future, Council Members not engage in media debate, but rather they should reserve their comments for public meetings. He spoke in favor of Council engaging in discussions to address the issue of Members attending mediation sessions, getting another opinion on the litigation issue, and finding solutions that best serve the citizens of Lodi.

Mayor Pro Tempore Howard expressed concern with the immediate response that was made by the Mayor to attend the mediation session on June 27, regardless of the outcome of Council's vote. While the Mayor may believe it was for sound reasons, Ms. Howard stated that she did not, because the action to disregard the vote was divisive to Council and

not complimentary to the community. She commented that it was unfortunate that so much over the past few weeks had been misrepresented to the community. She asked Mayor Hitchcock for a public apology and recognition that going against the vote of the Council was not using good discernment.

Mayor Hitchcock replied that she answers to the voters, not four Council Members who would prevent her from attending a meeting that is very important and in their best interest. She facetiously apologized for not being more willing to rise above her principles, and commented that it is part of who she is.

Mayor Pro Tempore Howard stated that she was concerned that Mayor Hitchcock's comments to the public and expression of her individual opinion would not be cohesive to the format that has been established and upheld by a majority of the Council over the years that the litigation strategy has been in place. She asked Ms. Hitchcock to speak as the voice of the Council, whether she personally agreed with it or not, and in the future state her opinions to the Council and legal team in closed session. She explained that this issue is unique because it pertains to litigation and Council is basing its decisions on information provided during closed session, which the public is not privy to.

Mayor Hitchcock recalled that Elk Grove City Attorney Tony Manzanetti advised Council that it is the duty of each Member to continue to advocate the minority opinion. She noted that all the legal transcripts are public records.

Mayor Pro Tempore Howard asked Ms. Hitchcock whether she believed it would be appropriate if advocating the minority opinion meant going against a vote of the Council, to which Ms. Hitchcock replied in the affirmative. Ms. Howard commented that it was not four Council Members who were setting the course of any decision this evening, it was actually the decision of the Mayor.

Mayor Hitchcock stated that it is the public's interest that Council votes on and the public's dollars that it is spending. Ms. Hitchcock believed she would be less than honest if she supported an opinion she did not agree with.

Council Member Hansen recalled that he had asked Mr. Manzanetti the very question that Ms. Howard and Ms. Hitchcock were now debating. Mr. Manzanetti's advice was that it was every Council Member's right to continue to publicly advocate the minority opinion. He pointed out that what is being debated is something that people have lost their lives for defending, i.e. the constitution, the democratic process, and free speech. Elected officials have a duty, however, to make sure they do not put the citizens they represent in jeopardy by exercising those rights.

City Manager Flynn suggested that Council consider bringing in a facilitator to assist them in working through these issues.

Council Member Land stated that he has always been a Council Member who wanted to look for solutions and has been willing to compromise. He recalled that at the beginning of his presentation he clarified that this was not about the litigation, it was about the integrity of the Council. He emphasized that the Council needs to function as one body. Tonight Council Members have told Mayor Hitchcock that they do not appreciate her going against Council decision and he expressed hope that she listened. He agreed with Mr. Flynn's suggestion to bring in a consultant to help Council work out its issues. He recalled suggesting it six months ago to the Mayor; however, she was not interested. He stated that if Council is willing to bring in a facilitator to work with all five Members to find a way to bring them together as a collective body, he would remove his request for censure and the reorganization of the City Council.

Mayor Hitchcock stated that she would take to heart the comments that were expressed this evening. She believed that every Council Member has been doing what they feel is in the best interest for the citizens of Lodi; although, they have different approaches to arriving at that goal.

MOTION:

Council Member Hansen made a motion, Hitchcock second, to direct the City Manager to schedule a team building session for the City Council.

DISCUSSION:

Council Member Beckman asked that staff arrange for a representative of Lehman Brothers to give Council a full briefing on the financial situation as soon as possible.

VOTE:

The above motion carried by a unanimous vote.

- I-2 "Discussion and possible action to reorganize the Lodi City Council" was ***pulled from the agenda.***

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Pro Tempore Howard, Hansen second, unanimously voted to continue the meeting following the 11:00 p.m. hour, but to consider only Items J-1 through J-4.

I. REGULAR CALENDAR (Continued)

- I-3 "State Budget update" was ***continued to the regular meeting of August 20, due to the above vote.***
- I-4 "Adopt resolution authorizing the City Manager to allocate Public Benefit Program funds to create the Lodi's Youth Helping Hands Project in the amount of \$25,000 and to execute a contract with the Rising Sun Energy Center to provide initial coordination and technical/training support for this residential program" was ***continued to the regular meeting of August 20, due to the above vote.***
- I-5 "Consider adoption of resolution in support of the proposal for an Executive Director of the Central Valley Mayor's Conference and agreement to contribute Lodi's proportionate share of \$2,472 to fund the position" was ***continued to the regular meeting of August 20, due to the above vote.***

J. ORDINANCES

- J-1 Ordinance No. 1732 entitled, "An Ordinance of the City Council of the City of Lodi Repealing and Reenacting Section 15.04.030 of the Lodi Municipal Code Relating to Building Permit Fees and Adding Section 15.04.035 Relating to the Adoption of a Fee Schedule" having been introduced at a regular meeting of the Lodi City Council held July 16, 2003, was brought up for passage on motion of Council Member Hansen, Beckman second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:
- Ayes: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-2 Ordinance No. 1733 entitled, "An Ordinance of the City Council of the City of Lodi Repealing and Reenacting Section 15.12.030 of the Lodi Municipal Code Relating to Plumbing Permit Fees and Adding Section 15.12.035 Relating to the Adoption of a Fee Schedule" having been introduced at a regular meeting of the Lodi City Council held July 16, 2003, was brought up for passage on motion of Council Member Beckman, Hansen second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-3 Ordinance No. 1734 entitled, "An Ordinance of the City Council of the City of Lodi Repealing and Reenacting Section 15.08.020 of the Lodi Municipal Code Relating to Mechanical Permit Fees and Adding Section 15.08.025 Relating to the Adoption of a Fee Schedule" having been introduced at a regular meeting of the Lodi City Council held July 16, 2003, was brought up for passage on motion of Council Member Beckman, Howard second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

- J-4 Ordinance No. 1735 entitled, "An Ordinance of the City Council of the City of Lodi Repealing and Reenacting Section 15.16.020 of the Lodi Municipal Code Relating to Electrical Permit Fees and Adding Section 15.16.025 Relating to the Adoption of a Fee Schedule" having been introduced at a regular meeting of the Lodi City Council held July 16, 2003, was brought up for passage on motion of Council Member Hansen, Beckman second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

None.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:13 a.m., Thursday, August 7, 2003.

ATTEST:

Susan J. Blackston
City Clerk